

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH KELLER, as Personal
Representative of the Estate of
Andrea Suzanne Armstead, Deceased

File No: 1:12-cv-00843-PLM

Plaintiff,

Hon. Paul L. Maloney

v

KALAMAZOO COUNTY, d/b/a KALAMAZOO COUNTY
SHERIFF'S OFFICE, JAIL DIVISION, RON THARGE, RN,
CONRAD BITELY, RN, MICHAEL BIERMAN, RN, DEPUTY
ANDY SCHULLING, DEPUTY MARK BEAUMONT, and
DEPUTY M. GRAY,

Defendants.

Law Offices of Daniel J. Harris, PC
DANIEL J. HARRIS (P58279)
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Fieger, Fieger, Kenney, Giroux & Danzig, PC
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PLAINTIFF'S MOTION TO APPROVE SETTLEMENT,
TO APPROVE REIMBURSEMENT OF COSTS,
TO APPROVE ATTORNEY FEES AND
TO APPROVE DISTRIBUTION OF PROCEEDS

Now Comes Elizabeth Keller, as P/R of the Estate of Andrea Suzanne Keller, Dec., by and through her attorneys, Geoffrey N. Fieger, Jeffrey A. Danzig and the law firm of Fieger, Fieger, Kenney, Giroux & Danzig, P.C. and Daniel J. Harris and the law firm of Daniel J. Harris, P.C., and hereby moves this Honorable Court for an Order Approving Settlement, Approving Reimbursement of Costs and Attorney Fees and Approving Distribution of Proceeds and in support thereof, states unto this Honorable Court as follows:

1. That this is a Civil Rights/Medical Malpractice claim alleging Wrongful Death under the Michigan Wrongful Death Statute, MCLA 600.2922.
2. That Elizabeth Keller was appointed Personal Representative of the Estate of Andrea Suzanne Keller by the Emmet County Probate Court on 4/20/12 (**Exh. A**).
3. That the parties agreed to ADR by way of Voluntary Facilitative Mediation and after two sessions concluding on 8/20/13, the parties reached a confidential settlement of this action by and through the services of Mediator, James J. Rashid. Further, that the parties will make the court aware of the confidential settlement amount at the hearing date of this motion.
4. That the Plaintiff-Decedent left surviving as her heirs, her mother, Elizabeth Keller, her father, Curtis Armstead, a half sister Emily Armstead, a half brother Ashton Armstead (a minor) and an estranged husband, Taylor Gesmundo.
5. That on 9/5/13, United States Magistrate Judge Joseph G. Scoville appointed William W. Jack, Jr., of the Smith, Haughey, Rice and Roegge firm, as Guardian Ad Litem for Ashton Armstead, a minor (**Exh. B**). Further, that the GAL has now submitted a report to this Honorable Court regarding the proposed settlement as well as the proposed distribution of proceeds to the heirs at law (**Exh. C**).
6. That Plaintiff's Estate retained the law firm of Fieger, Fieger, Kenney, Giroux & Danzig, P.C.

and the law firm of Daniel J. Harris, P.C. on a Contingency Fee basis and said law firms are entitled to reimbursement of their joint costs in the amount of Thirty One Thousand Three Hundred Ninety Nine and 48/100 (\$31,399.48).

7. That Plaintiff's Estate retained the law firm of Fieger, Fieger, Kenney, Giroux & Danzig, P.C. and the law firm of Daniel J. Harris, P.C. on a Contingency Fee basis and said law firms are entitled to a one third attorney fee, which amounts to Five Hundred Seventy Two Thousand Eight Hundred Sixty Six and 84/100 (\$572,866.84).

8. That there is a current Medicaid lien owed by the Estate to the State of Michigan for hospital and medical expenses incurred and that said lien has been negotiated with the State of Michigan, Dept. of Community Health and that the amount of \$17,998.76 will be paid out of Estate proceeds with this Honorable Court's approval (**Exh. D**). Further, that the Medicaid lien is the only known lien or encumbrance upon the Estate at this time.

Wherefore, Plaintiff's Estate now moves this Honorable Court for an Order, as follows:

1) Approve Settlement with these Defendants (in the amount to be published to the court at the time of this hearing, given it's confidential nature);

2) Approve Distribution of Proceeds, as follows:

TO: Fieger Law Firm and Harris Law Firm (Costs).....	\$ 31,399.48
TO: Fieger Law Firm and Harris Law Firm (Attny Fees).....	\$ 572,866.84
TO: State of Michigan (Medicaid).....	\$ 17,998.76
TO: Elizabeth Keller (heir).....	\$ 523,867.46
TO: Curtis Armstead (heir).....	\$ 453,867.46
TO: Emily Armstead (heir).....	\$ 35,000.00
TO: Ashton Armstead (heir).....	\$ 35,000.00
TO: Taylor Gesmundo (estranged husband).....	\$ 80,000.00

The undersigned attorneys declare under penalty of perjury that the statements contained herein are true and accurate to the best of their respective information, knowledge and belief.

Respectfully Submitted,

BY: /s/Jeffrey A. Danzig

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AND

/s/Daniel J. Harris

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Dated: 10/17/13.

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION TO APPROVE SETTLEMENT,
APPROVE COSTS, APPROVE ATTORNEY FEES AND APPROVE
DISTRIBUTION OF PROCEEDS**

This is a combined Civil Rights and Medical Malpractice claim, alleging wrongful death under the Michigan Wrongful Death Statute, MCLA 600.2922.

The parties hereto jointly agreed to participate in the ADR process by way of Voluntary Facilitative Mediation (Local Court Rule 16.3). The parties hired James J. Rashid as Mediator and after two sessions, culminating on 8/20/13, the parties agreed upon a proposed confidential

settlement which would bring this cause of action to its conclusion, pending court approval under the Michigan Wrongful Death Act, MCLA 600.2922.

The settlement was initially approved by the Personal Representative of the Estate, Elizabeth Keller (**Exh. A**). The proposed settlement then went to the Kalamazoo County Board of Commissioners for their approval, which was received on 9/3/13. The Plaintiff's Estate, by and through counsel, now move this Honorable Court for its approval of this confidential settlement, including approval of attorney costs, approval of attorney fees, approval of Medicaid lien reimbursement and approval of the proposed distribution of proceeds to the heirs at law.

On 9/5/13, United States Magistrate Judge Joseph G. Scoville appointed William W. Jack, Jr., of the Smith, Haughey, Rice & Roegge firm, as Guardian Ad Litem for Ashton Armstead, a minor, a person who may be entitled to recover in this wrongful death action by virtue of his relationship to plaintiff decedent (**Exh. B**). A report from Mr. Jack, the GAL, has been prepared for this Honorable Court's review and is attached hereto (**Exh. C**).

There is a current Medicaid lien owed by the Estate to the State of Michigan. That lien has been negotiated with the State of Michigan and the agreed upon amount, currently due and owing, is \$17,998.76, which will be paid out of Estate proceeds with this Honorable Court's approval (**Exh. D**). Further, that this Medicaid lien is the only known lien or encumbrance upon the Estate at this time.

Plaintiff's now move this Honorable Court for an Order approving this confidential settlement in accordance with this Motion and Brief and in accordance with the proposed Order Approving Settlement, Approving Costs, Attorney Fees and Approving the Distribution of Proceeds, attached hereto.

Respectfully Submitted,

BY: /s/Jeffrey A. Danzig
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Dated: 10/17/13